The Islamic Law of International Relations: Origins and Early Development

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Abstract

[International dealings and intercourse emphasize the need for comprehensive international law. Islam and Islamic civilization have taken significant initiatives to internationalize human relationship on theoretical plane on the one hand, and in regulating international dealing and intercourse in accordance with a defined legal system, on the other. Fundamental notions of such a legal system have been laid down in the Qur'an and the model example of the Prophet (peace be upon him). The law was further elaborated and developed by Muslim jurists in the early centuries of Islam. It dealt long ago with the types of new developments crystallizing in Western international law today, and, is also very much relevant to the modern world. – Editors]

The Origins of International Law

The peaceful regulation of international relations between human societies, particularly between kings and kingdoms, has been a difficult task from the very beginning. From time immemorial, jurists and philosophers have been trying to develop legal and/or moral principles that could be effective in controlling the use of force and in regulating relations between rulers and states in accordance with principles of justice and fair play. A major challenge to the protagonists of such principles was identifying the rational basis on which such laws could be founded. In the earlier efforts recorded by historians, this basis for international law was drawn from the scriptures of ancient religions, which contained frequent admonitions against misuse of force. However, these moral exhortations could not become the basis of any legal discipline or international jurisprudence.

The oldest foundation discussed by the Western jurists in their effort to develop viable and logical international jurisprudence was the natural law theory. This theory, which was based on God, nature, universal reason and pure reason as the possible bases and sources of international law, engaged the Western jurists for several centuries. These "sources" were regarded as the producers of law, or the fundamental sources from which all laws should proceed. This law could be determined on the basis of what was considered to be the right reason. Thus, the natural law theory presumed that the ultimate source and final basis of international law was metaphysical.

However, notwithstanding the philosophical worth and academic value of the natural law theory, it failed to give rise to an agreed universal law of international discourse. Its failure led to the positive law theory, which was based on the actual practices of states and rulers. This approach was more in keeping with the rising trend of secularism in the West, with its indefatigable efforts to divest not only law but all public life from religions or spiritual attire. The positive law theory was value-neutral and rejected normative overtones of law and other social disciplines. It also

refused to accept any non-state basis of the law, such as God, morality or reason.

Despite such academic efforts, most of the protagonists of the positive law theory appeared to be pessimistic or disappointed about human capability to develop such a law. An ancient Roman ruler is reported to have said that laws fail, or at least become silent, in the company of weapons. History too has shown that, during the interplay of weapons, laws either fail or choose to exit from the scene. The statement of the Roman ruler had indicated long before the fact that the experiments made by different societies and civilizations in the past to regulate inter-state relationships and avoid use of force have failed miserably. Despite these failures and attendant difficulties, the efforts to regulate human relationship, particularly in warlike situations, are perhaps as old as human society itself.

The first such effort recorded by history took place in Mesopotamia around 2000bc. Some of its details have come down to us. It was an agreement between two principalities of the region that had mutually decided not to resort to war and to resolve their border difficulties and other mutual and bilateral problems with negotiation and peaceful means. This document can rightly be considered the oldest agreement or treaty made with a view to resolving international disputes.

In this regard, efforts of the Indian and Chinese philosophers and thinkers are also important. They tried to develop such rules and principles as may be relied upon to regulate international relations.

In addition to these comparatively advanced communities, there were, in antiquity, rules of conduct to regulate relations between independent kings and communities, which had emerged out of their own usages and practices. The Egyptians were aware of such set rules and usages several centuries before the rise of Christianity.

Apart from these scattered examples, both in the East as well as in the West, attempts were made by the Greeks and the Romans to develop a law to regulate the use of force during an armed conflict. For instance the law of the Romans in this regard was known as jus gentium or the law of the people. Other societies had similar laws to provide a peaceful basis for solving mutual disputes and differences.

Development of Modern International Law in the West

Towards the close of seventeenth century, the Western civilization was finally able to lay the foundations of a law that eventually came to be known as international law. The foundations for modern international law have undergone quick changes from custom, treaties and eventually to quasi legislative attempts made by international bodies. A fuller discussion of this development here will divert our attention from the main theme. However suffices here to say that the modern international law was primarily intended to regulate relations among the Christian states of Europe, and these nations considered it obligatory only in their mutual relations. Non-Christians were not considered to be entitled to any benefit or privilege under this law for quite some time. Thus, international law as developed in the West is, by definition, a Christian law. Indeed, this definition is given in several standard textbooks of international law, including the masterpiece of Oppenheim, which is taught almost universally in all leading universities and law schools that

teach the Anglo-Saxon legal tradition, including those in Pakistan, India and Bangladesh.

Different people have interpreted this aspect of the law differently. Among the more extreme views, there are at least two papal decrees that were issued at different times to the effect that the Christian world is not religiously allowed to enter into any peaceful agreement with any Muslim country: Pope Nicholas IV and Pope Urban VI declared that any pact with non-Christians was null and void and that the Christians were not bound by their pacts with Muslims. When they ruled this, the Popes probably had in mind the Ottoman Empire. It was Turkey of 1856 which was admitted to be a member of international community having privileges and entitlement to receive its benefits for the first time in the history of international law in Europe. Turkey was followed by Japan, which was accorded this status in 1905.

These were transitional phases of the development of Western international law; European nations and countries were primarily concerned with regulating relations within their own continent and within one religious tradition. The time had not yet come in the West to expand the application of that law to other civilizations and countries. As application of the law has expanded, the West's previous attitude has undoubtedly acquired more objectivity and balance. It has to be acknowledged, however, that remnants of the old attitude remain embedded in the thinking of some of those who deal with international law and international matters today. This pains Muslims, who often bear its brunt, who are thus denied the full rights and privileges guaranteed to them under various instruments of international law, and who are therefore forced to acknowledge that they are not even yet treated as equal members of the international community. This perception is the natural corollary of the initial character of international law as developed in the West.

Western international law was conceived as something distinct from the municipal law of different countries. As such, for a long time, it dealt only with the states. The admittance of international organizations and international bodies as subjects of international law took place much later, i.e. by the middle of the twentieth century.

It took even longer for international law to take notice of groups of individuals and communities who did not represent a state or who were not represented by any state were taken notice of under international law. Indeed, the phenomenon of individuals and communities being recognized as subjects of international law is very recent, perhaps not more than three decades old. Insurgents, belligerents and such other communities, who may appear to be distinct and separate from the main community of a country, were not initially considered subjects of international law. Now, they constitute an important subject. Likewise, it took a long while for national liberation movements to be considered a subject of interest for international law. The liberation movements were not represented by any member state of the United Nations (UN). Therefore, neither the need was felt to take them into consideration, nor was the fabric of international law itself fit to extend any benefit and privilege to them as subjects.

The second half of the twentieth century witnessed a major change in international law and legal thinking in the Western world. The horrific experience of the Second World War led the world community to explore new dimensions of international law to protect and safeguard the interests of innocent civilians affected by armed conflicts. This period saw unparalleled expansion and

deepening of the science of international law, which have admitted new areas and raised new issues in international law over the past few decades. Most of these new developments do not find mention in the classical works on international law.
Some of the new areas of international law include regulation of space enterprises, use and division of beds of the high seas, management of the international financial system, and international communications. But the most important area that has found its way into international jurisprudence, and which has already extended its benefit to a large number of people, is the law of international human rights.

Human rights is an issue that was not included in many constitutions of the world at the beginning of the twentieth century. Before too long, however, a time came when the question of human rights acquired a position of prime importance in the context of legal thought, particularly in the field of constitutional law. This was soon followed by similar developments in international law.

It must be acknowledged that the credit for this innovative and positive change goes, to a large extent, to the Western tradition, which took the lead in providing constitutional guarantees to its citizens. One must also admit that the question of fundamental rights, the concept of rule of law, the mechanism of defending fundamental rights through constitutional means, and the idea of having a superior court to defend and protect the fundamental rights of the citizens as practiced in some modern Muslim countries are the results of the Western, and particularly the American, experience. This is why many American authors have boastfully — and rightly — claimed that the American constitutional tradition and principles were the most valuable and significant export of the United States. The Americans were justified in making this claim until about 20 years ago; unfortunately, their policies towards particularly the Muslim World during the past quarter a century have been such that the Americans are no more in a position to lay unqualified claim to such principles. .

Some Western scholars of international law regard the incorporation of human rights in the ambit of international law as a major feat. Martin Dixon considers it an achievement of considerable significance that, now, the individual is also counted in the jurisdiction of international law, even if there is no practical effect of this recognition.

It is a new trend for human rights have become a major, if not the most important, component of international law. Works written before the Second World War hardly made any mention of this issue. Not only did the books not mention this aspect, but institutions dealing with international law also refused to take any notice of the human rights of the individual before the middle of the twentieth century. For example, in 1927, in the well-known Lotus case, the Permanent Court of International Justice had ruled that “international law governs relations between independent states.”

This seems to have changed in the aftermath of the horrifying experiences of the Second World War, which led people to develop this subject as an important branch of international law. The UN and its subsidiary bodies have played a tremendous role in giving this new dimension to

international jurisprudence. Today, the question of human rights is considered an important factor in international relations. Several Western countries have adopted the objective of protection, preservation and defense of human rights as a cornerstone of their foreign policy and international relations.

(Here, it may be pointed out that what has been achieved in the Western world after the terrible experiences of the two world wars, i.e. recognition of individuals and non-state entities as subjects of international law, and regard for the fundamental human rights of those who are affected by wars, had been an important subject of Muslim international law from the very beginning. This is explained in the next section of this article.)

A key source of the law on human rights are international agreements. However, it is now generally acknowledged that the law of international relations, particularly insofar as it relates to human rights, has its primary basis on contractual obligations of the states. International agreements and contractual obligations of states are, however, formal sources only, and by no means the only reasons for the sanctity and importance of this branch of international law. Indeed, it is primarily the concern for justice in the hearts and minds of people, and their belief in the dignity of man, that guarantees the protection of these rights. If the concern for the dignity of human beings is not deep-rooted in the hearts and minds of a people, mere contractual obligations cannot deliver. This has been made amply evident by experiences of the last two decades. The examples of human rights violations in regions like Palestine, Bosnia and Kashmir and more recently Guantanamo Bay are to well known to need any citation.

The concern of Western international law and jurisprudence for the rights and privileges of individuals has led to the emergence of a new branch of international law known as international humanitarian law. This special branch of international law seeks to protect the individual and collective rights of non-combatant civilian groups during war. For example, it tries to prevent genocide and discrimination on any ground, and provides special protection to minorities. “The law of human rights,” according to a writer on international law, “cannot be explained solely by reference to the traditional positivist approach to international law.” This statement simply means that the traditional Western international law has been ineffective in dealing with these important issues and that it should now be the primary concern of international law and international institutions to ensure the protection of the rights and privileges of human beings. Now, the international law should transcend the traditional positivist approach and its limited, narrow perspective.

The international humanitarian law is a new branch of international law that seeks to limit the use of violence in international conflicts, firstly, by sparing those who do not or no longer directly participate in the hostilities, and secondly, by limiting the violence to the bare minimum needed to achieve the aims of the conflict. The law requires that the aims of any conflict should only be to weaken the military potential of the enemy rather than totally and physically eliminating him.

The basic principles of humanitarian law are:

Distinction between civilians and combatants;

Prohibition of attack on those of the combatants who are no more engaged in the war;

Prohibition of infliction of unnecessary suffering on the people;

Principle of necessity; and

Principle of proportionality.

These are considered to be the five basic principles of international humanitarian law as it is being developed in the Western world. This law assumes that a conflict-free world does not exist and, therefore, does not aim at total elimination of violence. It does not seek to provide total protection to those affected by armed conflict between two countries and nations. It does not differentiate between combatants on the basis of their respective aims, objectives or motives in the conflict. Those with legitimate motives and those with illegitimate motives, those with moral considerations and those without moral considerations have been virtually and practically equated. The law presupposes or presumes that the parties have a rational basis for the conflict they are entering upon.

This is the intellectual context in which we will discuss the Muslim contribution to international law.

Muslim International Law

Islam is not only international but universal in its message and approach, and the Muslim community has performed its universal role from the very beginning. The first calls made by the Prophet of Islam (peace be upon him [pbuh]) were addressed to humanity rather than to any particular group of people. We never find that the Qur'an or the Prophet (pbuh), in his recorded sayings, speak exclusively to the Arabs, the Iranians, or other ethnic or linguistic entities. People are addressed either as "O mankind" or "O children of Adam." Many verses and important discourses in the Qur'an open with one of these phrases, particularly in the Makkan surahs (chapters). This shows that contrary to the notion of some western writers the approach and message of the Qur'an was universal and pan-human from the beginning of revelation in Makkah.

There is a misunderstanding about Islam and Muslims, particularly in some Western minds, that Islam offers a monolithic system; that it does not acknowledge any right to diversity and does not accept any civilizational norm or cultural value outside the ambit of Islam. This perception is not correct. The Qur'an itself draws attention, at times in very moving terms, to the good qualities of other nations. The practical implications of this appreciation for others was elaborated by the Prophet (pbuh), when he declared that wisdom was the common property of human beings, and, therefore, wherever it was to be found, it should be acquired and availed.

This value was reflected in the practices of the Prophet of Islam (pbuh) as well. As a young boy in his early twenties, he had participated with the elders of his family in laying the foundation of an alliance that sought to protect the poor; provide justice to those who were wronged; provide shelter to those who did not have it; and provide succor to the weak. This alliance was not ethnic or parochial in its application; its benefits were available to all, irrespective of tribal or other

differences. This alliance is known in Islamic history as Hilf al-Fudul. It was launched more than three decades before the Hijrah (migration of the Prophet [pbuh] to Madinah). After he proclaimed his prophethood, people noticed that his teachings were similar to the principles espoused by the alliance and asked him about it. He said he still relished the good memories of that alliance and, if ever he were to be invited during the days of Islam to join a similar alliance, he would accept the invitation immediately. He added that he would consider participating in such an alliance better than the best of worldly blessings and benefits (or "red camels", considered the best worldly gain by the Arab Bedouins). This indicates the readiness of true Muslims to participate in international efforts to uphold human rights.

If any doubts remain about Islam's profound concern for creating a just and tolerant world society and its respect for diversity, they should be dispelled by the Qur'an. Among numerous other relevant verses, the Qur'an addresses the People of the Book with this call: O People of the Book! Come to agree with us on a common objective: to support and promote the freedom of human beings and equality of mankind and to promote those moral and ethical ideals which we jointly and commonly share . It may be pointed out that this call was made by the Qur'an, and by extension the Muslim world, more than 1,420 years ago. And a response to it is still awaited.

It was due to this open encouragement by the Qur'an and the Prophet Muhammad (pbuh) to work with all mankind to promote the humanitarian cause that, in the twentieth century, Muslim countries did not have any hesitation in joining international treaties and organizations, such as the United Nations, the (earlier) League of Nations, the Organization of African Unity, and the Non-Aligned Movement. It is also why one finds Muslim countries actively participating in several international fora today. Beyond any doubt, the Muslim mind has always been ready to cooperate with others for the advancement of common international objectives and to serve humanity as a whole.

Not only does Islam respect the diversity of nations, it also recognizes that other religious beliefs and ideologies exist side by side with it. Recent Muslim jurists have placed special focus on this feature. The Qur'an is perhaps the only Divine Book in the history of religions that has acknowledged the existence of other religions. It refers to the People of the Book, the Christians, the Jews, the Sabians, idolators, atheists, etc. It guides Muslims in how they should conduct themselves with those among these followers of other beliefs who enter into agreements with them, those who prefer to stay away from any kind of relationship, those who wish to remain neutral, and those who wish to enter into a hostile relationship. The fact that these various categories have been mentioned in the Qur'an — and that high moral standards have been declared for Muslims to deal with each of them — indicates that the Qur'an not only contemplates a variety of international relationships but has also taken care of possible avenues of interaction and intercourse between Muslims and non-Muslims.

Practical details of this interaction were demonstrated by the Prophet of Islam (pbuh) through his normative practice, the Sunnah, or the model example. Based on the Qur'an and Sunnah, Muslim scholars and jurists of the second century (ah) developed an independent legal-historical discipline known as siyar. Initially a branch of the biography of the Prophet, with emphasis on the wars and other missions and expeditions in which he took part, siyar soon became focused on delineating a set of rules for regulating international conduct. This exercise of second century

Muslim jurists yielded many works seeking to codify the part of the Shari'ah that sought to regulate the interaction of Muslims with their non-Muslim contemporaries. Out of these efforts, around a dozen works have come down to us, either fully or in parts. Three of these, which were written by Imam Muhammad ibn Hasan al-Shaibani (d. 189ah), a disciple of Imam Abu Hanifah (d. 150ah), deserve special mention. Shaibani first wrote a relatively brief book, which he called Kitab al-Siyar al-Saghir (meaning, the Shorter Book on International Law). Later on, he wrote a more comprehensive book, which he called Kitab al-Siyar al-kabir (i.e. the Major Book on International Law). Towards the end of his life, he may have felt that the earlier book was too compact and the later one too elaborate for the common student, and undertook the preparation of another book meant for a general readership. It seems that either he could not complete this work or it could not come down to us. An incomplete manuscript is preserved in the Sulemaniye Library in Turkey. We can safely conclude that Shaibani is the first jurist in the history of mankind who wrote three extant books on international law as a distinct and separate subject from other branches of legal thought and activity.

In the West, the Dutch lawyer Hugo Grotius (d. 1645ad) is considered to be the father of international law. He is the first Western jurist to have left us a comprehensive book, in Dutch, on the law of war and peace. However, 866 years before the birth of this great jurist, Imam Muhammad ibn Hassan al-Shaibani had already written three books in Arabic on the subject of siyar, embodying his own findings and rulings as well as the rulings of his teacher, Abu Hanifah, and other contemporary jurists regarding how the relations of the Islamic state were to be regulated with non-Muslim communities and countries as well as with other non-Muslim entities.

The science of siyar as developed by Muslim jurists of the second century addressed not only the issues related to states and communities, but also the rights of the individual, for example, the individual Muslim living in a non-Muslim environment, and the individual non-Muslim living in a Muslim environment. We may recall that modern international law has only started taking notice of individuals and communities during the last quarter century. However, in the writings of Shaibani and his contemporary jurists, we find that they had recognized, from the earliest times, individuals and communities as subjects of international law. They dealt with the rights and privileges not only of individual citizens of the enemy state, but also of Muslim citizens visiting the enemy territory.

Martin Dixon has enumerated five principles on the basis of which the success or failure of an international law can be judged. According to him, the primary function of international law is to prevent war and control the use of force. If a law fails to achieve this objective, it is a failed law. The five principles are:

1. to prevent a war;
2. to resolve the dispute peacefully with compromise;
3. to contain the war to the minimum;
4. to contain the effects of war; and

5. to protect the affectees of war.

All of these criteria are found in the Qur'an and the sayings of the Prophet and have further been expatiated upon by Muslim jurists.

It is also noteworthy that the question of the validity of international law, which remains unsettled in the West, did not pose any problems in Islamic international law. From the days of Hugo Grotius up to the middle of the twentieth century, the West heatedly debated the legal character of international law. Some scholars and lawyers have contended that international is not law in the real sense. Among those who thus deny the 'legal' character of international law are John Austin, Hobbes, Bentham, to quote only a few. Some other scholars say it is a vanishing point of jurisprudence; in other words, it is withering away as a legal authority. Others say it is only a positive international morality. Still others have said that international law is simply a set of international ethical values.

These scholars deny the legal character of international law mostly because:

There is no recognized body to make or create its rules;

There is no hierarchy of courts with compulsory jurisdiction to settle disputes under or over these laws; and

There is no accepted system for enforcing these laws.

Thus, a sizeable community of lawyers and jurists asks how, in the absence of a legal order, a judiciary and an executive, can these principles or rules be considered law? And what is the legality of international law when it has no sanction and no teeth, and no authority to enforce or defend it?

However, the other camp of scholars has always upheld that international law is law in the real sense.

This question was never raised by Muslim jurists. To them, Muslim international law had the same sanction as that enjoyed by the municipal law of Islam. Indeed, both types of law get their legitimacy from the Qur'an and draw their authority from the Sunnah of the Prophet (pbuh), the two perennial sources of Islam, which are considered authoritative and obligatory in character by the Muslim rulers and Muslim masses alike. Therefore, Muslim jurists experienced no problem in deciding whether the international law of Islam was law, or whether it required any separate sanction of its own, and we do not find any controversy regarding this matter in any early book

on Muslim international law.

Muslim international law also dealt long ago with the type of new developments crystallizing in Western international law today in the context of the reorganization of Western communities into bodies like the European Union (EU). The critical question being raised by lawyers and jurists in different countries, particularly in Western Europe, is whether the law regulating the EU and the authority exercised by the European Parliament has undermined or is going to deprive the European nation-states of their claimed sovereignty. One may also ask whether the new EU is, in a way, a revival of the erstwhile church state. This question becomes relevant in view of the striking similarities between the two such as common citizenship, uniform legal system and restriction of the system practically to Christian as demonstrated by the reservation of the Union to grant admission to Turkey in the Union.

The British Parliament is already supposed to surrender or, at least, share some of its authority and power with the European Parliament; it has compromised the absolute and once acclaimed sovereignty of the British Parliament. This question is being discussed in legal circles around the globe. Answers have been given by British lawyers, emphasizing the sovereignty of British Parliament, despite the fact that they have conceded some of their authority to the European Parliament.

Such questions were discussed by Muslim jurists in the second and third centuries of Hijrah, when two or more administrations had come into existence under the common law of the Dar al-Islam and within the frontiers of the single territory of Islam. We can, to some extent, liken the Dar al-Islam of the third and the fourth centuries onwards with the present European Union, where citizenship has been made common to a large extent, and where many areas once restricted to nationals have been opened up to citizens of other countries, at the cost of the countries' own identity and, to some extent, their sovereignty. By and large, with some differences, this was the situation and the nature of the relationship between the Dar al-Islam and the different Muslim administrations within it.

The science of siyar developed by the Muslim jurists in the second century and expanded by subsequent scholars also raised some issues that may not appear to be very pertinent now. However, they were very much relevant in those days. This happens to every living and vibrant law. In every legal tradition it is observed that, with the passage of time, some of its contents have become either obsolete or irrelevant to changing requirements. As the needs of the times change, an internal mechanism of the legal system works to exclude outdated issues from the law's mainstream. This happened in respect of some issues in early Muslim international law. For example, questions related to the distribution of the spoils of war find a significant mention in almost all earlier writings of Muslim scholars, mostly because, in the early centuries, particularly the first two or three centuries, the Muslims did not have regular paid armies. Muslim armies consisted mostly of the volunteers who joined the war either to defend their country or to participate in a jihad and thereby obtain the Divine favor promised time and again in the Qur'an. In this situation, it was very important for Muslim jurists to consider the question of how the spoils of war were to be distributed to the warriors and to the participants in the jihad. However, when the Muslim governments had regular armies maintained in different regions, the

issue lost much of its significance.

Some other issues are also found in earlier works that do not have relevance today. However, a time might come when they become relevant again.

Certain features of Muslim international law distinguish it from the concepts of international laws in other traditions. First of all, Muslim international law is part and parcel of a comprehensive jurisprudential system. It is a comprehensive legal scheme, which is balanced, all-pervasive, and integrative, and which takes care of all possible legal situations in the life of the Muslim community and Muslim individuals. This scheme is anchored in human consideration, ethical values and spiritual foundations. The Islamic law of nations has never been an amoral legal system. It has always drawn its legitimacy from moral principles and its validity from religious foundations embodied in the Qur'an.

Islamic law has been, from the beginning, a multi-ethnic, multi-cultural legal system that provides a practical model and viable paradigm for a pluralistic society. It sought to create spiritual-moral unity in the diversity of human races and legal opinions. It also sought, at the same time, to maintain the diversity and cultural independence of different peoples and nations within the general framework of the unity of Islam. Like other parts of Islamic law, the Muslim international law was based on the Qur'anic concept of justice, which distinguishes between real justice and legal justice. The Shari'ah is perhaps the first legal system in human history that has created a distinction between legal justice, to be imparted by the state, its organs and machinery, and the real justice to be imparted by individuals. At the same time, it acknowledges the contractual foundation of international dealings and transactions.

The Qur'an is full of verses emphasizing the importance of fulfilling obligations. It requires the believers to fulfill their commitments and keep their promises. These Qur'anic injunctions were phrased by the Holy Prophet in a legal maxim. Muslims must abide by the terms and conditions to which they agree . In pursuance of this fundamental legal maxim, Muslim jurists laid down other principles, which have now been acknowledged by different legal traditions of the world and have entered the jurisprudence of all mankind. For example, meaning, "The treachery committed by the ambassador will be taken to be a treachery committed by the state." The state sending the ambassador must, therefore, take the responsibility of the actions of the ambassador as long as he is serving as an ambassador.

Despite the rich contribution of Muslim international law to the regulation of international relations on sound moral foundations and despite the substantial literature produced by Muslim scholars on this subject from the second century onwards, it is painful to notice that many, if not all, leading and renowned Western scholars absolutely fail to recognize the legacy.

I recall being deeply impressed by Oppenheim's seminal work, A Treaties on International Law, which I used to read in my student days with much care and respect. The scholarship of the author and the comprehensive nature of the book were awe-inspiring. However, it was a source of great dismay and disappointment to note that even this learned jurist had chosen to ignore the Muslim contribution to international law. Discussing the origins of international law, Oppenheim refers to Greek history, and then talks about the Romans. Afterwards, he takes a jump of more

than one thousand years to the modern Western world. Not even a single line has been devoted to the contribution of Muslim scholars, even though their writings were presumably available to him through translations in German, Roman and French. Despite this availability of material, he decided not to make even a passing reference to the Muslim contribution to international law. Regarding the long period of one thousand years during which there was, according to him, no development of international law, he says there was no room and no need for any development. This is how he justifies, in a sentence, a millennium's 'gap' in international law-making.

As the foregoing discussion has shown, the contribution of Muslim jurists to international law was not only highly developed and sophisticated for its own age, it remains relevant both as a source and as a base for further development today. Indeed, in many of its key principles, the international law developed by Muslims more than a millennium ago is closer to and more practically geared for achieving the modern age's stated ideals of a tolerant and just international society. Revisiting this rich heritage is, therefore, a must, not only for Muslims but for scholars of law in all societies.

Muslims, particularly students of law in the Muslim world, would like to remind their Western friends that, in expanding the law of international dealings and developing new legal thought, regard should be given to the diversity of cultural backgrounds, social patterns, moral ideals and religious beliefs and aspirations that characterize the world community. A law by definition cannot ignore the aspirations and ideals of the people to whom it is to be applied. A law cannot survive if it does not take into cognizance or does not respond to the ground realities. The ground reality is that more than one fourth of the human population shares a distinct culture and a set of ideals and aspirations. Any system of law intended to be universal in its application must take into consideration the ideals and aspirations of one fourth of humanity. This is why the Charter of the International Court of Justice requires the Court to take into consideration the writings of responsible and important jurists in all legal traditions, not just the West's. Whatever has been written on legal subjects in other leading human traditions and civilizations must be taken into notice before a question is decided. If nothing else, this should suffice to justify a new consideration of Muslim international law.

Islam and the contribution of Muslim jurists provide that missing link of a thousand years that has been ignored by Western scholars, either because of unavailability of material or due to some other considerations. Now, however, the material has become available through translations of important works in leading Western languages. No justification remains for the world's scholars to ignore the contribution of hundreds, if not thousands, of the best legal minds in human history.

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Various scholars have expatiated upon the pros and cons of the positivist theory of the law. For its relevance to international law, see Starke, 1992, pp. 20-24.

For some details about the views of ancient Indian philosophers, see Kapoor and Tandan, 1980.

See, inter alia, Nussbaun, 1954.

Jus Gentium, literally law of nations, was a term of Roman law. It was not equivalent to international law in its modern sense. It was, rather, opposed to civil law and meant the laws recognized as such by the civilized nations of the ancient times. In the absence of any international law proper, Jus Gentium was relied upon to regulate international dealings.

Oppenheim, 2003, p. 87: “…The predominant strain of modern international law was in its origins largely a product of western European Christian civilization…”

Hamidullah, 1364ah, p. 30.

Cited by Hamidullah, op. cit., on the authority of Nys, 1894.

For a short discussion on the recognition of individuals as subjects of international law, see Levy, 1991, pp. 72-74.

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See, for example, Joshi, 2006, pp. 304-372.

See PCIJ Sev. A 9(1927): 4-33 ff.

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International humanitarian law has grown gradually out of a number of international treaties and conventions, the earliest of which were the Geneva Conventions and the Hague Conventions signed in the nineteenth and twentieth centuries. All this law is now found in the four well-known Geneva Conventions of August 12, 1949.

See, for example, the Qur'an, Al-Baqarah 2:21; An-Nisa 4:1; Al-Hujurat 49:13; etc.

See, for example, the Qur'an, Al-A'raf 7: 26, 27, 35; etc.

For reference to some good qualities of Christians, see the Qur'an, Al-Ma'idah 5: 82-83

Tirmidhi, al-Jami', Kitab al-'Ilm, 19; Ibn Majah, al-Sunan, Kitab al-Zahd, 15.

The details of this alliance have been preserved by, among others, Ibn Hisham in his Sirat an-Nabi.

See Suhaili, al-Rawd al-Unuf, in loco.

"The People of the Book" is a term frequently used by the Qur'an to denote those who subscribe to a Divine Book or a religion of Divine Origin. More particularly, it is a reference to the Jews and the Christians.

Quran : 3:64

Hamidullah, 1987, p. 14.

See, for example, the Qur'an, Al-Baqarah 2:62, Al-Mai'dah 5:69; Al-Hajj 22:17; etc.

See, for example, the Qur'an, At-Tawbah 9: 4-5, 7; An-Nisa 4: 90, 91; etc.

The science of siyar and maghazi was developed and codified by the early doctors of Islam for this very purpose. Cf. Hamidullah, op. cit., Chapter II.

Ghazi, 1998, pp. 7-17.

For some such details, see Ghazi, 2007, pp. 154-163.

Laleli collection, No. 1156 Arabic MSS, now preserved in Sulemaniye, along with 113 other collections.

Modern international humanitarian law is also based on the premise that its main purpose is to protect the affectees of war.

For elaborate details, see Zemmali, 1997.

Cf. Starke, 1972, pp. 18 ff.

For a detailed discussion, see Hamidullah, op. cit., 1987, pp. 74-76.

Ghazi, 2006, pp. 92-94.

One aspect of this is the Qur'an's emphasis on the fulfillment of obligations and pledges in, for example, Al-Anfal 8: 55-56; At-Tawbah 9: 4, 7; etc.

The Qur'an, Al-Anfal 8: 55-56; At-Tawbah 9: 4; etc.

Reported by Abu Daud, Tirmidhi, Ahmad and Hakim.

This maxim was worded by Imam Shafi'i, a renowned and celebrated jurist of the second century.

Al-Sarakhsi, Sharh al-Siyar al-Kabir, Vol. I, p. 297.

Oppenheim, 1958, p. 77.

Source: http://www.ips.org.pk/international-relation/the-muslim-world/1201-mahmood-ahmad-ghazi.html